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State of Florida



Public Service Commission

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RECORDS AND REPORTING

DATE: SEPTEMBER 14, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (KNIGHT) *wk* *pk*
DIVISION OF COMPETITIVE SERVICES (M. WATTS) *mw* *AW* *AW*

RE: DOCKET NO. 001109-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST WEBNET COMMUNICATIONS, INC. FOR APPARENT VIOLATION OF RULE 25-4.118, F.A.C., LOCAL, LOCAL TOLL, AND TOLL PROVIDER SELECTION.

AGENDA: 09/26/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001109.RCM

CASE BACKGROUND

- November 12, 1999 - WebNet Communications, Inc. (WebNet) obtained Interexchange Telecommunications certificate number 7220.
- February 15, 2000 - WebNet paid Regulatory Assessment Fees of \$50.00 with no reported intrastate revenues for 1999. As of August 16, 2000, WebNet had outstanding penalties and interest due in the amount of \$3.00.
- April 21, 2000 to August 21, 2000 - Staff received 45 complaints from customers claiming they were slammed by WebNet.

DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

- August 11, 2000 - Staff opened this docket to investigate whether WebNet should be ordered to show cause why it should not be fined or have its certificate canceled for apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order WebNet Communications, Inc. to show cause why it should not be fined \$320,000 or have certificate number 7220 canceled for apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

RECOMMENDATION: Yes. The Commission should order WebNet to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$320,000 or have certificate number 7220 canceled for apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection. The company's response should contain specific allegations of fact and law. If WebNet fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is not paid within ten business days after the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and certificate number 7220 should be canceled. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (M. Watts)

STAFF ANALYSIS: Between April 21, 2000, and August 21, 2000, the Commission's Division of Consumer Affairs (CAF) logged 45 complaint cases from consumers claiming they were slammed by WebNet. As of September 11, 2000, staff has determined that 32 of those complaints were apparent unauthorized changes of the primary interexchange carrier by WebNet. Staff recommends that WebNet be fined \$10,000 per violation, for a total of \$320,000. This recommendation is consistent with previous decisions in Docket Nos. 980950-TI, Initiation of show cause proceedings against Corporate Services Telcom, Inc. for violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, and 980897-

TI, Initiation of show cause proceedings against Least Cost Routing, Inc. d/b/a Long Distance Charges for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection.

Pertinent excerpts from the rule are included as Attachment A, pages 6-7.

The majority of the violations were for the apparent failure of the company to comply with Rule 25-4.118(2)(c)2., Florida Administrative Code. This rule defines the minimum content of the Third Party Verification (TPV) audio recording that must be maintained as proof that the carrier change was authorized. It incorporates by reference Rule 25-4.118(3)(a)1. through 5., Florida Administrative Code, which requires the company to provide certain information to the customer and obtain certain information from the customer to prove that the carrier change was authorized. The most common omissions were failure to provide the name of the provider and the service(s) being subscribed to (Rule 25-4.118(3)(a)1., Florida Administrative Code), failure to obtain a statement that the person requesting the change is authorized to request the change (Rule 25-4.118(a)(3), Florida Administrative Code), and failure to state that the Local Exchange Company may charge a fee for each provider change (Rule 25-4.118(3)(a)5., Florida Administrative Code). In three cases, the company did not provide a Third Party Verification tape or a Letter of Agency, in apparent violation of Rules 25-4.118(2) and (6), Florida Administrative Code.

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Staff believes that WebNet's conduct in executing unauthorized carrier changes in apparent violation of Commission Rule 25-4.118, Florida Administrative Code, has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., having found that the company had not intended to

violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as WebNet's conduct at issue here, would meet the standard for a "willful violation."

As stated above, there are 32 apparent slamming violations against WebNet within a five-month period. Although this is the first show cause docket opened against WebNet, staff believes that WebNet has displayed a pattern of disregard for the Commission's Rules and the customers' wishes. Therefore, staff recommends that the Commission order WebNet to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$320,000 or have certificate number 7220 canceled for apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection. The company's response should contain specific allegations of fact and law. If WebNet fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is not paid within ten business days after the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and certificate number 7220 should be canceled. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendation in Issue 1 is approved and WebNet timely responds to the Order to Show Cause, this docket should remain open pending the outcome of the show cause proceedings.

If WebNet fails to respond to the Order to Show Cause within the 21-day show cause response period and the fine is not received within ten business days after the expiration of the show cause response period, certificate number 7220 should be canceled and this docket may be closed administratively. If WebNet pays the fine recommended in Issue 1, this docket should be closed.

(Knight)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved and WebNet timely responds to the Order to Show Cause, this docket should remain open pending the outcome of the show cause proceedings.

If WebNet fails to respond to the Order to Show Cause within the 21-day show cause response period and the fine is not received within ten business days after the expiration of the show cause response period, certificate number 7220 should be canceled and this docket may be closed administratively. If WebNet pays the fine recommended in Issue 1, this docket should be closed.

**Excerpts from Rule 25-4.118
Florida Administrative Code
Effective December 28, 1998**

Rule 25-4.118(2), Florida Administrative Code, states in part:

(2) A LEC shall accept a change request from a certificated LP or IXC acting on behalf of the customer. A certificated LP or IXC shall submit a change request only if it has first certified to the LEC that at least one of the following actions has occurred:

(a) The provider has a letter of agency (LOA), as described in (3), from the customer requesting the change;

(b) The provider has received a customer-initiated call, and beginning six months after the effective date of this rule has obtained the following:

1. The information set forth in (3)(a)1. through 5.;
and

2. Verification data including at least one of the following:

- a. The customer's date of birth;
- b. The last four digits of the customer's social security number; or
- c. The customer's mother's maiden name.

(c) A firm that is independent and unaffiliated with the provider claiming the subscriber has verified the customer's requested change by obtaining the following:

1. The customer's consent to record the requested change or the customer has been notified that the call will be recorded; and

2. Beginning six months after the effective date of this rule an audio recording of the information stated in subsection (3)(a)1. through 5.

Rule 25-4.118 (3)(a)1. through 6., Florida Administrative Code, states:

(3)(a) The LOA submitted to the company requesting a provider change shall include the following information (each shall be separately stated):

1. Customer's billing name, address, and each telephone number to be changed;

2. Statement clearly identifying the certificated name of the provider and the service to which the customer wishes to subscribe, whether or not it uses the facilities of another company;

3. Statement that the person requesting the change is

authorized to request the change;

4. Statement that the customer's change request will apply only to the number on the request and there must only be one presubscribed local, one presubscribed local toll, and one presubscribed toll provider for each number;

5. Statement that the LEC may charge a fee for each provider change;

6. Customer's signature and a statement that the customer's signature or endorsement on the document will result in a change of the customer's provider.

Rule 25-4.118(5) and (6), Florida Administrative Code, states:

(5) A prospective provider must have received the signed LOA before initiating the change.

(6) Information obtained under (2)(a) through (d) shall be maintained by the provider for a period of one year.